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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सक।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 20th December, 1985.

BILL No. 94 of 1985

A Bill further to amend the National Highways Act, 1956.

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the National Highways (Amendment) Act, 1985. Short title.

48 of 1956.

2. Section 5 of the National Highways Act, 1956, shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:— Amendment of section 5.

“(2) In case of a railway line or railway track crossing a national highway, it shall be the responsibility of the administration of that railway to construct and maintain in proper repair, three hundred metres of such national highway on either side of the railway line or track. Provided that if such a crossing falls within the jurisdiction of a Municipal Committee, Corporation, Cantonment Board or any other statutory authority, the length of such approach roads which shall be maintained by the railways shall be determined by mutual agreement between the railway administration and such municipal committee, corporation, Cantonment Board or statutory authority but the railways shall not be absolved of their responsibility for the proper maintenance of such approach roads.

(3) It shall also be the responsibility of the railways to construct and maintain over-bridges or under-bridges, as the case may be, at such railway crossings.

(4) Notwithstanding anything contained in section 2 or any other law for the time being in force, the portion of the national highways referred to in sub-section (2) shall, for the purposes of this section, vest in the railway administration concerned."

STATEMENT OF OBJECTS AND REASONS

The traffic on national highways gets unduly stuck up at railway crossings which are without any over-bridges or under-bridges. This causes considerable loss of time and money to the users of national highways. Besides traffic jams, it also causes pollution at such points. It is, therefore, necessary and expedient for Parliament to legislate so that railways should be made responsible for construction and maintenance of over-bridges/under-bridges at such railway crossing instead of leaving this work to State Governments or local administrations who do not always have adequate funds. It is also essential that no railway crossing on a national highway should be without any over-bridge or under-bridge.

Hence this Bill.

NEW DELHI;
March 20, 1985.

K. RAMAMURTHY.

FINANCIAL MEMORANDUM

Clause 2 of the Bill which seeks to insert new sub-sections in section 5 of the National Highways Act, 1956, provides that the railway administration shall construct and maintain three hundred metres of such national highway on either side of the railway line or track which crosses a national highway and shall also construct and maintain over-bridges or under-bridges at such railway crossings. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees two crores per annum.

It is also likely to involve a non-recurring expenditure of about rupees one crore.

BILL NO. 171 OF 1985

A Bill to provide for the declaration and public scrutiny of assets of civil servants.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Declaration of Assets by Civil Servants Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) “assets”, in relation to a civil servant or a member of his family, means, his right, title or interest in any movable or immovable property whether as owner, mortgagor, lessor, lessee, *benamidar* or in any other manner whatsoever;

(b) “civil servant” means and includes a person appointed to a public service and post in connection with the affairs of the Union and who draws a basic salary of rupees one thousand or more per month;

(c) “Committee” means a committee constituted under section 3;

Short
title, ex-
tent and
com-
mence-
ment.

Defi-
nitions.

(d) "family", in relation to a civil servant means his or her—

(i) spouse (not being a judicially separated spouse);

(ii) any other person related to him or her whether by blood or marriage and wholly or substantially dependant upon him or her;

(e) "Government" means the Central Government;

(f) "Indian Penal Code" means, the Indian Penal Code, 1860;

45 of 1860.

(g) "liability" in relation to any civil servant, does not include liability to the extent of an amount not exceeding five thousand rupees;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "tribunal" means a tribunal set up under section 12.

Central
Services
Assets
Com-
mittee.

3. (1) The Members of both Houses of Parliament shall elect a Committee to be known as the Central Services Assets Committee, consisting of fifteen members from among themselves in accordance with the system of proportional representation by means of the single transferable vote:

Provided that a Minister shall not be elected as a member of the Committee and if a member of the Committee is appointed a Minister, he shall cease to be the member of the Committee from the date of such appointment.

(2) The term of the Committee shall be for the duration of a Lok Sabha.

(3) The working of the Committee shall be regulated by rules framed by the Central Government in consultation with the Speaker of the House of the People and the Chairman of the Council of States.

(4) The Committee shall scrutinise the declarations of assets and liabilities furnished to it by the civil servants and report to the Houses of Parliament from time to time as to the results of such scrutiny.

Duty of
civil ser-
vants to
declare
assets
and liabi-
lities.

4. (1) Every civil servant shall, within a period of three months from the date of commencement of this Act, furnish to the Committee a declaration in the prescribed form setting out particulars of his assets and liabilities and the assets and liabilities of members of his family as on the date of such commencement.

(2) Every civil servant, before he assumes charge of his post, shall make a declaration in the prescribed form as required under sub-section (1).

(3) Every civil servant, who ceases or has ceased to hold office as a civil servant shall, within six months immediately preceding the commencement of this Act, furnish to the Committee a declaration of his assets and liabilities and those of the members of his family within three months from the date of commencement of this Act or the date on which he ceases to hold office, whichever is later.

5. Every civil servant shall, throughout the term of his office, furnish, on or before the 30th day of June every year, to the Committee a declaration in the prescribed form of all assets acquired, held or disposed of or any liability incurred by him or by any members of his family during the preceding financial year.

Annual declaration of acquisitions and disposals.
Corrections in the declarations.

6. If a civil servant, who has furnished a declaration under this Act, subsequently discovers any omission or mistake in such declaration, he may furnish a statement in the prescribed form to the Committee giving details of the correction he desires to make explaining such omissions or mistakes.

7. The Committee, after the end of the relevant year, shall scrutinise the declarations received by it and lay them before both Houses of Parliament alongwith its comments, if any, on such declarations.

Laying of declarations before Parliament.

8. A true copy of all the declarations made under this Act shall be made available to any member of the public on payment of a prescribed fee.

Copy of declarations to be made available to public.

9. If a civil servant delays the submission of the declaration for more than a month without showing any reasonable cause to the satisfaction of the Committee, he shall be punishable with a fine of rupees two hundred per day during the period of delay till he submits the declaration.

Penalty for delay.

10. If a civil servant is found to have amassed assets disproportionate to the known sources of his income or those of the member or members of his family, a probe shall be conducted in public by the Committee and the result of such probe shall be laid before each House of Parliament.

Probe by Committee.

45 of 1860. 11. If a declaration furnished by a civil servant is proved to be false he shall be liable to perjury and be punishable under section 193 of Indian Penal Code.

Penalty for false declaration.

12. The Government shall set up a tribunal to try cases of civil servants referred to it by the Government.

Setting up of tribunal.

13. (1) If after scrutiny of a declaration, the Committee recommends that the civil servant should be awarded suitable punishment, the Government shall prosecute such civil servant.

Prosecution.

2 of 1974. (2) The Tribunal shall have the same powers and privileges as a Sessions Court under the Code of Criminal Procedure, 1973.

14. (1) If a civil servant is found to have amassed assets disproportionate to the known sources of his income or those of his family member or members without showing any reasonable cause to the satisfaction of the tribunal, his assets shall be ordered, partly or wholly, to be confiscated irrespective of the fact that such assets stand in the name or possession of any other person.

Penalty.

(2) If a civil servant is found to have acquired such assets by misusing his official position, he shall be punished with imprisonment which may extend to seven years but which shall not be less than six months.

Power to
make
rules.

15. (1) The Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner in which the Committee shall be elected and its working regulated under section 3;

(b) the form in which declarations shall be furnished under section 4;

(c) the manner in which the declarations shall be scrutinised;

(d) the administrative arrangements with regard to the custody of the declarations and any other documents furnished under this Act;

(e) any other matter necessary to carry out the provisions of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree to make any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

It is a matter of common knowledge that some of the civil servants have amassed assets disproportionate to the known sources of their income. Very often such assets are held in *benami* or in the name of their family members. The arm of law does not extend to them in many cases. The departmental requirement of furnishing return of property by civil servants is neither adequate nor effective. In any case, once a person chooses to work as civil servant, his assets and liabilities should be known to the Legislatures and through them to the public whom the civil servants are supposed to serve. The Bill seeks to provide for matters necessary to ensure that civil servants do not amass assets that are disproportionate to their known sources of income.

NEW DELHI;
August 8, 1985.

K. RAMAMURTHY

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a committee of Members of both Houses of Parliament to scrutinise the declarations of assets and liabilities furnished by the civil servants. Clause 12 provides for the setting up of a tribunal to try the cases of civil servants referred to it by the Government. Some staff will have to be provided to assist the Committee and the tribunal in carrying out their work and for other administrative work. The Bill, therefore, if enacted, is likely to involve a recurring expenditure of about rupees four lakhs per annum from the Consolidated Fund of India.

It is also likely to involve a non-recurring expenditure of about rupees twenty lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill provides for the making of rules for giving effect to provisions of the legislation and, in particular, for the various matters referred to in that clause.

The matters in respect of which rules may be made pertain to matters of form, administrative detail or procedure and as such the delegation of legislative power is of a normal character.

BILL NO. 192 OF 1985

A Bill to provide for the constitution and regulation of a Force called the Medical Security Force for the better protection and security of hospitals, health centres, medical units, dispensaries, blood banks and medical research centres.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

- | | |
|--|---|
| <p>1. (1) This Act may be called the Medical Security Force Act, 1985</p> <p>(2) It extends to the Union territories only.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> | <p>Short
title, ex
tent and
commence-
ment.</p> |
| <p>2. In this Act, unless the context otherwise requires,—</p> <p>(a) "Force" means the Medical Security Force constituted under section 3;</p> <p>(b) "Inspector-General" means the Inspector-General of the Force appointed under section 4;</p> | <p>Defini-
tions.</p> |

(c) "medical superintendent" means a medical officer or any person who superintends a medical unit;

(d) "medical property" includes any goods, money or valuable security or apparatus, medicines, machineries belonging to, or in the charge or possession of, a medical unit;

(e) "medical units" includes hospitals, health centres, dispensaries, medical colleges, medical stores, poly clinics, blood banks and other medical care units owned, controlled or managed by the Central Government or Union territory administrations;

(f) "member of the Force" means a person appointed to the Force under this Act other than a superior officer;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "superior officer" means any of the officers appointed under section 4 and includes any other officer appointed by the Central Government as a supervisory officer of the Force.

Constitution of the Force.

3. (1) There shall be constituted and maintained by the Central Government a Force to be called the Medical Security Force for the better protection and security of medical properties.

(2) The Force shall be constituted in such manner, shall consist of such number of superior officers and members of the Force and shall receive such pay and other remuneration as may be prescribed.

Appointment and powers of superior officers.

4. (1) The Central Government may appoint a person to be the Inspector-General of the Force and may appoint other persons to be Deputy Inspector Generals, Chief Security Officers, Security Officers or Assistant Security Officers of the Force.

(2) The Inspector-General and every other superior officer so appointed shall possess and exercise such powers and authority over the members of the Force under their respective commands as is provided by or under this Act.

Appointment of members of the Force.

5. The appointment of members of the Force shall rest with the Inspector-General, who shall exercise that power in accordance with rules made under this Act:

Provided that the power of appointment under this section may also be exercised by such other superior officer as the Central Government may by order specify in this behalf.

Certificates to members of the Force.

6. (1) Every member of the Force shall receive on his appointment a certificate in the form specified in the Schedule, under the seal of the Inspector-General or such other superior officer as the Inspector-General may specify in this behalf, by virtue of which the person holding such certificate shall be vested with the powers of a member of the Force.

(2) Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a member of the Force.

7. (1) The superintendence of the Force shall vest in the Central Government, and subject thereto the administration of the Force shall vest in the Inspector-General and shall be carried on by him in accordance with the provisions of this Act and of any rules made thereunder.

Superintendence and administration of the Force.

(2) Subject to the provisions of sub-section (1), the administration of the Force within such local limits in relation to a medical unit as may be prescribed shall be carried on by the Inspector-General, Chief Security Officer, Security Officer in accordance with the provisions of this Act and of any rules made thereunder.

8. Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may—

Dismissal, removal, etc.

(i) dismiss, suspend or reduce in rank any member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; and

(ii) award any one or more of the following punishments to any member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:—

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument.

9. (1) Any member of the Force aggrieved by an order under section 8 may within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub-section (3) the decision of the said authority thereon shall be final:

Appeal and revision.

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) In disposing of an appeal, the prescribed authority shall follow such procedure as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may call for and examine the record of any proceeding under section 8 or under sub-section (2) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit:

Provided that no order imposing an enhanced penalty under sub-sections (2) or (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

Duties of
members
of the
Force.

10. It shall be the duty of every superior officer and member of the Force—

- (a) to promptly execute all orders lawfully issued to him by his superior officer;
- (b) to protect and safeguard medical property;
- (c) to remove any obstruction in the movement of medical property or any impediment in the medical research, studies and treatment;
- (d) to do any other act conducive to the better protection and security of medical property;
- (e) to prevent adulteration of food and medicines supplied to the medical units;
- (f) to arrange for analysis of samples of food and medicines supplied to the medical units; and
- (g) to maintain law and order and to prevent lawlessness in the campus of the medical units.

Power to
arrest
without
warrant.

11. Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest—

- (a) any person who has been concerned in an offence relating to medical property punishable with imprisonment for a term exceeding six months, or against whom a reasonable suspicion exists of his having been so concerned; or
- (b) any person found taking precautions to conceal his presence within medical unit limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to, medical property; or
- (c) any person found to be committing a cognizable offence relating to the property belonging to any medical unit; or
- (d) any person found adulterating food or medicine or supplying spurious drugs and medicines to the medical units.

Proce-
dure
to be
followed
after
arrest.

12. Any superior officer or member of the Force making an arrest under this Act, shall, without unnecessary delay, make over the person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken to the nearest police station.

Officers
and mem-
bers of the
Force to be
considered
always on
duty and
liable to
be emplo-
yed in any
Union
territory.

13. (1) Every superior officer and member of the Force shall, for the purpose of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed in any Union territory.

(2) No superior officer or member of the Force shall engage himself in any employment or office other than his duties under this Act.

14. A member of the Force shall not by reason of his suspension from office cease to be a member of the Force; and he shall, during that period, be subject to the same responsibilities, discipline and penalties to which he would have been subject if he were on duty.

Responsibilities of members of the Force during suspension,

15. (1) Without prejudice to the provisions contained in section 8, every member of the Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation of lawful order made by a superior officer, or who shall withdraw from the duties of his office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority in any employment other than his duty as a member of the Force, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to imprisonment for a period not exceeding six months.

Penalties for neglect of duty, etc.

2 of 1974.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this section shall be cognizable.

16. (1) Subject to any general directions which may be issued by the Central Government, it shall be lawful for the Inspector-General, on a request received in this behalf from the medical superintendent concerned of a medical unit, showing the necessity thereof, to depute such number of supervisory officers and members of the Force as the Inspector-General may consider necessary for the protection and security of that medical unit and the properties belonging to, or in charge or possession of the medical unit or for controlling and preventing lawlessness in the campus of the medical unit:

Deputation of the Force to medical units owned, controlled or managed by Union territory administrations or other statutory corporations.

Provided that in case of a medical unit, owned, controlled or managed—

- (i) by a Union territory administration;
- (ii) by a Government company of which the Central Government is not a member but the medical unit is situated in the Union territory;
- (iii) by a Corporation established by or under an Act of Union territory;

no such request shall under normal circumstances be entertained unless it is made with the consent of the administration of the Union territory in which the medical unit is situated.

(2) Notwithstanding anything contained in the foregoing provisions of this Act, if the Central Government is satisfied that a situation has arisen in which the Union territory administration has failed to manage or control any medical unit situated in the Union territory and that the state of affairs prevailing in the medical unit is prejudicial to public interest or is satisfied that prevailing lawlessness and maladministration in the medical unit is impeding medical research, studies and treatment, the Central Government may by order—

- (a) for a period not exceeding one year, assume to itself the power of maintaining law and order and all such functions of the

Union territory administration which may be considered by the Central Government necessary to improve the management of the medical unit;

(b) direct the Inspector-General to depute such number of supervisory staff and members of the force as the Inspector-General may consider necessary for the protection and security of that medical unit and the properties belonging to, or in charge or possession of the medical unit and/or for controlling and preventing lawlessness in the Campus of the medical unit:

Provided that such order may be revoked or varied by a subsequent order at any time:

Provided further that every order made under this section shall be laid before each House of Parliament and shall, except where it is a order revoking a previous order, cease to operate at the expiration of three months unless before the expiration of that period it is approved by resolutions passed by both Houses of Parliament.

Applica-
tion
of Act 22
of 1922
to mem-
bers of
the Force.

17. The Police (Incitement to Disaffection) Act, 1922, shall apply to members of the Force as it applies to members of a police force.

Cer-
tain
Acts not
to apply
to mem-
bers of
the Force.

18. Nothing contained in the Payment of Wages Act, 1936, or the Industrial Disputes Act, 1947, or the Factories Act, 1948, shall apply to members of the Force.

4 of 1936.
14 of 1947.
63 of 1948.

Protec-
tion
of acts of
mem-
bers of
the
Force.

19. (1) In any suit or proceedings against any superior officer or member of the Force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the act, and if it is so proved, the superior officer or member of the Force shall thereupon be discharged from any liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any superior officer or member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this Act or the rules thereunder shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power
to make
rules.

(2) In particular, and without prejudice to the foregoing powers, such rules may provide for—

(a) regulating the classes and grades and the pay and remuneration of superior officers and members of the Force and their conditions of service in the Force;

(b) regulating the powers and duties of superior officers and members of the Force authorised to exercise any functions by or under this Act;

(c) fixing the period of service for superior officers and members of the Force;

(d) regulating the punishments and providing for appeals from, or the revision of, orders of punishment, or the remission of fines or other punishments;

(e) any other matter which has to be, or may be, prescribed.

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

THE SCHEDULE

(See section 6)

A.B has been appointed a member of the Medical Security Force under the Medical Security Force Act, 1985, and is vested with the powers, functions and privileges of a member of the Force.

STATEMENT OF OBJECTS AND REASONS

Despite serious efforts to improve the facilities for medical treatment, education, research and studies the efforts of the Government have so far failed to produce the desired results. Negligence, corruption, growing lawlessness, disturbances due to frequent agitations, rampant thefts and pilferages, adulteration in food and medicines have adversely affected medical services, education and research in the country. Huge amounts from the public exchequer are lost every year due to pilferage and other malpractices which have by now become common in almost all hospitals, health centres, medical colleges and research centres. The police forces being very much preoccupied and involved in routine law and order problems have not been able to pay deserving attention to medical units.

It is therefore necessary to raise a disciplined "Medical Security Force" for the better protection and security of hospitals, health centres, dispensaries, blood banks, medical colleges and medical research centres.

This Force can, in times of need, provide suitable assistance to the police forces who are charged with the responsibility of overall maintenance of law and order in medical units.

PRIYA RANJAN DAS MUNSHI

NEW DELHI;

October 24, 1985

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of Medical Security Force. Clause 4 provides for the appointment of superior officers of the Force. Clause 5 provides for the appointment of members of the Force. Clause 6 provides for the issuance of a certificate to the members of the Force. Clause 20(2) (a) provides for regulating the classes and grades and the pay and remuneration of superior officers and members of the Force. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of rupees two crores per annum.

It is also likely to involve a non-recurring expenditure of about rupees fifty lakhs on account of provision of office, buildings, furniture, etc. for the Force.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Government to make rules to carry out the purposes of the Act. The matters in relation to which such rules may be made have been detailed in the Bill. These matters are of procedure necessary for the effective governance of the Force.

The delegation of legislative power is thus of a normal nature.

BILL NO. 173 OF 1985

A Bill further to amend the Code of Civil Procedure, 1908.

Enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1985. Short title.

5 of 1908

2. In section 100 of the Code of Civil Procedure, 1908, in sub-section (1), (3), (4) and in the proviso to sub-section (5), the word "substantial" shall be omitted. Amendment of section 100.

STATEMENT OF OBJECTS AND REASONS

Section 100 of the Code of Civil Procedure, 1908 provides for a second appeal to the High Court from every decree passed in appeal by any Court subordinate to that High Court, if the High Court is satisfied that the case involves a substantial question of law. The expression "substantial question of law" has given rise to a very wide discretion to the Court inasmuch as what is and what is not a "substantial question of law" is being interpreted differently by different Judges in the same Court and by different High Courts and in this process very often justice is denied to the aggrieved party. It would be more definite and determinate ground for second appeal if it is only a "question of law" and not a "substantial question of law". The Bill seeks to omit the word "substantial" from section 100.

NEW DELHI;
August 26, 1985.

P. M. SAYEED

BILL No. 186 OF 1985

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1985. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 16 of the Constitution,—

Amendment of Article 16.

(i) in clause (2),—

(a) after the word “caste,” the word “age,” shall be inserted;—

(b) the following proviso shall be added at the end, namely:—

“Provided that Parliament may by law prescribe minimum age required for appointment to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory.”;

(ii) after clause (2), the following clause shall be inserted, namely:—

“(2A) Nothing in this article shall prevent Parliament from making any law prescribing maximum or minimum age restriction in regard to a class or classes of employment or appointment to posts in Armed Forces, Para Military Forces and Police Forces where sound physical fitness is a vital criteria.”.

STATEMENT OF OBJECTS AND REASONS

The number of unemployed persons have increased at an alarming rate. Continuous unemployment for a long period leads to frustration among the unemployed jobseekers, particularly among those who cross the age limit prescribed by the Government for recruitment in Government jobs. In view of the present unemployment situation in the country and the difficulties of the unemployed persons to get Government jobs within the stipulated age limit, it is proposed that there should not be any age restriction in Government jobs except in case of recruitment to Armed Forces, Para Military Forces and Police Forces where physical fitness and sound health is a vital criteria.

Hence this Bill.

NEW DELHI;
October 24, 1985.

PRIYA RANJAN DAS MUNSHI

BILL No. 191 OF 1985

A Bill further to amend the University Grants Commission Act, 1956.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the University Grants Commission (Amendment) Act, 1985.

Short
title and
com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

3 of 1956.

2. In section 12 of the University Grants Commission Act, 1956, after clause (j), the following new clauses shall be inserted, namely:—

Amend-
ment of
section
12.

“(k) advise the Central Government and the State Government on the steps to be taken to prevent politicisation of the University education system in any State;

(l) advise the Central Government on steps to be taken to protect the autonomy of University and/or for preventing unreasonable interference by the State Government in the academic affairs of the University;

(m) recommend steps to be taken by the Central Government, if after inquiry the Commission is satisfied that for improvement of University education and/or for preventing deterioration in the standard of education it is necessary for the Central Government to take over partly or fully the management of any University, to take over management of such University;

(n) advise the Central Government on taking steps for declaring any University as an institution of national importance and on introducing a suitable legislation before Parliament for the purpose.”.

STATEMENT OF OBJECTS AND REASONS

Calcutta University has a student population of about 0.3 million. The University has a commanding position among the Universities in the Eastern region. Since sometime, attempts are being made to politicalise the education system in Calcutta University. Unreasonable politically motivated interference in the academic affairs is posing a serious threat to the autonomy of the University. Academic atmosphere in the University is badly affected. Some renowned educationists have suggested that the management of the Calcutta University should be taken over by the Centre or that the University should be declared by law as an institution of national importance. There is likelihood of similar interference in the affairs of other Universities in the country.

In order to enable the Central Government to take appropriate decision in the matter it is proposed that the advice and recommendation of the University Grants Commission may be obtained.

The powers and functions of the Commission are therefore proposed to be increased so that the Commission may advise and make recommendations to the Central Government in all such cases.

Hence this Bill.

NEW DELHI;
October 24, 1985.

PRIYA RANJAN DAS MUNSHI.

BILL NO. 196 OF 1985

A Bill to provide for the constitution of a permanent Boundary Commission to resolve inter-State boundary disputes between States and States and between Union territories and States.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

- | | |
|--|--|
| <p>1. (1) This Act may be called the Boundary Commission Act, 1985.</p> <p>(2) It shall come into force at once.</p> | <p>Short title and commencement.</p> |
| <p>2. The President shall appoint a Boundary Commission headed by a Judge of the Supreme Court and consisting of two other members who shall not be holding office under either the Union or the State Government.</p> | <p>Appointment and composition of the Boundary Commission.</p> |
| <p>3. The Commission shall resolve every boundary dispute on the basis of the following criteria:—</p> <p>(1) a village shall be the basic unit;</p> <p>(2) simple linguistic majority, failing which relative linguistic majority, shall be the determining factor; and</p> <p>(3) geographical contiguity shall also be kept in view while applying the criteria mentioned in clauses (1) and (2).</p> | <p>Criteria for resolving boundary disputes.</p> |
| <p>4. The findings of the Commission shall be binding on all the parties to a dispute.</p> | <p>Findings of the Commission.</p> |

STATEMENT OF OBJECTS AND REASONS

There is a grave threat to the nation's unity from increasing bitterness arising out of boundary disputes between States. These disputes must and can be resolved expeditiously in the interest of the nation's unity and strengthening our people's faith in the democratic processes. Such disputes have defied solution mainly because of the absence of well-laid and universally applicable principles.

The Bill seeks to provide these objectives.

NEW DELHI;

November 18, 1985.

MADHU DANDAVATE

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the appointment of a Boundary Commission consisting of a Judge of the Supreme Court and two other members. A recurring expenditure on this account is estimated to be roughly about forty lacs of rupees per annum by way of salaries and allowances of the Chairman and members and staff of the Commission.

A non-recurring expenditure of about ten thousand rupees has to be incurred for furniture and office equipment of the Commission.

BILL No. 193 OF 1985

A Bill to provide for a uniform system of school education in India.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Uniform System of School Education Act, 1985.

Short
title,
extent
and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date, within one year of the date of assent to the Bill, as the Central Government may, by notification in the Official Gazette, appoint.

2. Notwithstanding anything contained in any other law for the time being in force,—

Uniform
system
of
school
educa-
tion.

(i) there shall be a uniform system of school education for all children in the country; and

(ii) all recognised schools run by the Central Government or by any State Government or by any organisation or individual on public school education system or any other pattern shall be integrated with the uniform system of school education and shall impart education on the same pattern and conditions, including standard of education, as other schools following that system.

3. The Central Government or the State Government, as the case may be, shall not recognise for any purpose any educational certificate awarded by a public school or a private school imparting a different pattern of education.

Educa-
tional
certifi-
cates of
public
schools,
etc.
not to
be
recog-
nised.

STATEMENT OF OBJECTS AND REASONS

Uniformity in the system of school education is imperative to arouse consciousness of national integration in the highly sensitive and impressionable minds of the children. The type of education imparted to the children at the school level determines their growth in the final analysis as future citizens of the country.

It is necessary that the same type of basic education should be imparted at the school level to all the children irrespective of the social and economic status of their parents to avoid any feelings of discrimination or denial of equal opportunities in their future careers.

In our country, while on the one hand we have schools run by the Central Government or a State Government or local bodies and institutions meant for the common people, there are special schools popularly known as 'public' schools' meant for the privileged classes where only the children of the affluent can get admission. In between, there are private schools run by organisations or individuals whose main objective is to earn money.

It is, therefore, necessary to develop a uniform system of school education and the different types of schools should be integrated in that uniform system.

Hence this Bill.

NEW DELHI;
November 16, 1965.

BALASAHEB VIKHE PATIL

BILL No. 195 OF 1985

A Bill further to amend the Income-tax Act, 1961.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Income-tax (Amendment) Act, 1985

Short
title and
com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1961.

2. In section 10 of the Income-tax Act, 1961, after clause (16), the following clause shall be inserted, namely:—

Amend-
ment of
section
10.

“(16A) any allowance, fee, reward or gain whether in cash or in kind received by any person, of not more than forty years of age, by performing as a playwright, musician, painter, singer, stage actor or as a sportsman including athlete;”.

STATEMENT OF OBJECTS AND REASONS

The life of a playwright, musician, painter, singer, stage actor and sportsman (including athlete) is full of stress and strains. Many of them have to face distress at the fag end of their lives when they are out of form or not in a position to perform well. They have to depend on the income which they had received as allowance, fees, reward or gain in cash or, in kind in the earlier parts of their lives when they were in peak form, for maintaining themselves and their families in the old age.

It is, therefore, proposed that the income received by individuals upto the age of forty years as allowances, fees, reward or gain in cash or in kind by performing as a playwright, musician, painter, singer, or as a sportsman, may be exempted from income-tax, so that they may save some money for hard days.

Hence this Bill.

NEW DELHI;

PRIYA RANJAN DAS MUNSHI

October 24, 1985.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 133/441/85- TPL, dated 18 November, 1985 from Shri Vishwanath Pratap Singh, Minister of Finance to the Secretary-General, Lok Sabha].

The President, having been informed of the subject matter of the Income-tax (Amendment) Bill, 1985 by Shri Priya Ranjan Das Munshi, M.P., has recommended under articles 117(1) and 274(1) of the Constitution the introduction of the said Bill in Lok Sabha.

BILL NO. 198 OF 1985

A Bill to provide for the prohibition of use of religious, communal, regional and sectoral names for political parties.

WHEREAS it has been noted that use of religious, communal, regional and sectoral nomenclatures in the titles of political parties recognised for the purposes of elections to the Houses of Parliament and to the State Legislatures and allotment of symbols thereto gives rise to a situation where narrow religious, communal, regional and sectoral considerations take the place of considerations of socio-economic policies, where enlightened public opinion is subjugated to emotions and sentiments;

AND WHEREAS such a situation is inconsistent with the principles of SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and unity and integrity of the Nation as contemplated under the Preamble to the Constitution of India;

AND WHEREAS it is considered necessary and expedient in the interest of purity of elections to the Houses of Parliament and Legislatures of various States and in the interest of elections to be held in a fair and efficient manner, to prohibit the use of such nomenclatures in the title of political parties;

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prohibition of use of Religious, Communal, Regional and Sectoral Nomenclatures for Political Parties Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires, "political parties" means an association or body of individual citizens of India registered with the Election Commission as a political party.

3. The use of religious, communal, regional and sectoral nomenclatures in the title of a political party shall be prohibited.

Short title, extent and commencement.

Definition.

Prohibition of religious, communal regional and sectoral names for a political party.

STATEMENT OF OBJECTS AND REASONS

Growing tendencies to play with religious sentiments and to evoke regional, communal and sectoral loyalties of the masses and the play of other divisive forces with the obvious object of seeking easy election to these august representative bodies, can be witnessed on the eve of and during elections to the Houses of Parliament and Legislatures in different States. A situation has arisen where narrow, religious, communal and sectoral considerations taking the place of considerations of socio-economic policies pursued by various political parties and emotions and sentiments for narrow sectoral affinities tend to blur enlightened public opinion and balanced judgement of the people while deciding the destiny of the Nation by way of elections. These narrow tendencies present a grave threat to the very unity and integrity of the Nation and militate against the principles of Sovereignty, Socialism, Secularism and Democracy which the Constitution of India seeks to establish.

Hence this Bill.

NEW DELHI;

November 18, 1985.

ANAND SINGH

BILL No. 197 OF 1985

A Bill further to amend the Income-tax Act, 1961.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Income-tax (Amendment) Act, 1985

Short
title
and
com-
mence-
ment.

(2) Save as otherwise provided in this Act, it shall come into force from the date it receives the assent of the President and shall apply to all the existing proceedings and disputes irrespective of the assessment year to which they might relate and the stage at which they might be pending

43 of 1961.

2. In section 2 of the Income-tax Act, 1961 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2.

(a) for clause (1), the following clause shall be substituted, namely:—

‘(1) “agricultural income” means only such income, as is derived by the actual tiller of the land whose holding by self or

his family and relations including wife, father, mother, sons, grandsons, unmarried daughters, or benamidars does not exceed twenty acres; however, if the aforesaid relations live separately, cultivate separately and their kitchens are separate, the limit of twenty acres shall apply to each family unit or individual as the case may be; and whose income from agriculture does not exceed his income from sources other than agriculture:

Provided that—

(a) agricultural income shall be taxed at half rates applicable to income from other sources;

(b) in every case where the agricultural holdings of a family unit or an individual exceeds twenty acres, it shall be compulsory to maintain accounts, except in those cases where the cultivator is illiterate and his holding though exceeding twenty acres is less than one hundred acres;

(c) there shall be no tax on agricultural income in the year in which there is loss; however, loss shall not be set off against income from any other source in the same year and shall not be carried forward or set off from the income of the subsequent years;

(d) agricultural income shall be computed and treated as separate total income and shall not be clubbed with the income from any other source;

(e) income from orchards and fruit-crops grown on land exceeding twenty acres shall not be treated as agricultural income;'

(b) for clause (31), the following clause shall be substituted, namely:—

'(31) "person" includes—

(i) an individual,

(ii) a family unit,

Explanation.—A family unit would comprise of—

(a) all the members of a single joint family including wife, father, mother, sons, grandsons, wives of grandsons and all unmarried daughters in the family except where the members may not be living jointly or not having a common residence, common kitchen and common vehicles;

(b) all the business, trade and callings done by the members of a family unit in partnership with each other or in the name of private limited company in which the majority of the shares are held by the family unit as defined in clause (a) above or in the names of individual members of the family unit assessed in the hands of the family unit and not assessed in separate hands.

(iii) association of persons,

Explanation.—Where two or more family units have joined hands in doing any business, trade or calling, income therefrom shall be assessed in the status of association of persons irrespective of whether it is carried on in any status, including a partnership firm or a private limited company or in any other status, except in the name of a public limited company.

(iv) private limited company,

Explanation.—A private limited company shall be assessed separately only if it is not a part of family unit or association of persons.

(v) partnership firm,

Explanation.—A firm shall be assessed separately only if it is not a part of the family unit or association of persons.

(vi) public limited company,

Explanation.—The public limited companies shall be assessed as a separate unit.

(vii) a total authority.

(viii) artificial juridical person, not falling within any of the preceding clauses,

Explanation.—The trusts whether public or private shall be assessed as a part of the family unit or the association of persons to which the creator or the settler belongs.

Overriding Explanation.—(a) The assessing authority shall make assessments keeping in view that there is no tax avoidance due to the multiplicity of the status created by a person or a family or a group of persons or families and shall ensure that the income from all trades, business and callings under the control and management of such persons is assessed at one place and not in separate hands or status;

(b) Income from salary derived as an employee or income derived from a profession or proprietary business by use of personal merit and technical or professional qualification or income from interest on securities and dividends and property derived from investment made out of personal savings of an individual shall be assessed in the hands of the individual.

3. For section 3 of the principal Act, the following section shall be substituted, namely:—

‘3. For the purpose of this Act, “previous year” means, the financial year next preceding the assessment year.

Substitution of new section for section 3.
“Previous year” defined.

Explanation.—(a) In the case of new business, the previous year shall be for a period of twelve months or less than twelve months starting from the date of commencement of the business and ending on the 31st day of March next following;

(b) There shall be no separate previous years adopted by any assessee for different sources of income or in whatever circumstances and no change in the previous year shall be allowed to any assessee by any authority.’.

Amend-
ment of
section
10.

4. In section 10 of the principal Act, clauses (1) and (2) shall be omitted.

Substi-
tution
of new
section
for
section 11.

5. For section 11 of the principal Act, the following section shall be substituted, namely:—

Income
from
property
held
for
charitable
or re-
ligious
purposes.

“11. The trusts created out of the property earmarked for charitable, religious or any other purpose shall be grouped as follows:—

(a) public trusts;

(b) private trusts;

Explanation.—(a) Public trusts shall be those which are created for the benefit of the general public and are for charitable purposes and they shall include trusts for providing medical facilities, educational facilities or uplift of the poor; income of such trusts shall be exempt to the extent it is utilised for the aforesaid purposes and any income which is not so utilised shall be subject to tax;

(b) The income derived from private trusts which are not created for providing medical or educational facilities or for the uplift of the poor shall be subject to tax in the usual manner;

(c) If a trust derives any income from business, trade or calling, its income shall be clubbed with the income of the creator or settler or the family unit or association of persons with which the creator or the settler may be connected and the actual expenditure on medical facilities, educational facilities or uplift of the poor shall be allowed as deduction in computing the total income.”

Substi-
tution
of new
section
for
section 12.

6. For section 12 of the principal Act, the following section shall be substituted, namely:—

Income
of trusts
or insti-
tutions
from
con-
tributions.

“12. Any voluntary contributions received by a public trust shall be exempt if it is actually used for providing for medical facilities, educational facilities or for the uplift of the poor and the surplus, if any, shall be taxed at the rates applicable to income from other sources.”.

7. Section 12A of the principal Act shall be omitted.

Omission
of
section
12A.

8. Section 13 of the principal Act shall be omitted.

Omission
of
section 13.

9. For section 13A of the principal Act, the following section shall be substituted, namely:—

Substi-
tution
of new
section
for
section
13A.

“13A. (1) The income of the political parties from all sources shall be exempt to the extent it is applied to fulfil the objects for which the political party is created or for meeting the election expenses of the candidates or for propagation of the manifesto, ideals and political thought for which the party is created and is fighting for.

Special
provision
relating
to in-
comes of
political
parties.

(2) Any surplus left after actual expenditure incurred on the items as mentioned in sub-section (1) shall be subject to tax at half the rates applicable to income from other sources.

Explanation.—Every political party shall maintain its accounts giving full details regarding sources of income including names and addresses of the persons, institutions or organisations from which the income or contributions are derived and in the absence of such details the income shall be treated as income from undisclosed sources and any expenditure incurred therefrom shall not qualify for any exemption and such income shall be subject to tax in the ordinary course.”.

10. For section 14 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution
of new
section
for
section 14.

“14. All income shall for the purposes of charge of income-tax and computation of total income be classified under the following heads of income:—

Heads
of
income.

A.—Salaries,

B.—Interest on securities,

C.—Income from house property,

D.—Profits and gains of business, profession, trade or calling,

E.—Capital Gains,

Explanation.—Long Term Capital gains shall not be chargeable to tax and shall not be included in the computation of the total income in respect of the transfer of assets which takes place after the Income-tax (Amendment) Act, 1985 comes into force.

F.—Income from other sources.”

Amend-
ment of
section
32.

11. In section 32 of the principal Act, the following Explanation shall be inserted at the end, namely:—

“Explanation.—(a) The depreciation shall be allowed proportionately depending upon the number of months in which the machinery is put to actual use, e.g., if the machinery is installed in the month of March, the assessee shall be entitled to one-twelfth of the depreciation and if it is installed in July and put to use in that month he shall be entitled to three-fourth of the depreciation.

(b) Extra shift allowance shall also be allowed proportionately depending upon the actual use of the machinery.

(c) In case of old machinery, no attempt shall be made to ascertain separately the number of days each machinery is run to allow the extra shift allowance; that shall depend on the number of days a particular concern or unit as a whole is run.

(d) From the date on which the Income-tax (Amendment) Act, 1985 comes into force there shall be only one kind of allowance of depreciation at the rates which may be prescribed in respect of the machinery and plant and different kinds of assets and allowances like initial depreciation, additional depreciation etc. shall cease to exist.”.

Omission
of
section
32A.

12. Section 32A of the principal Act shall be omitted.

Substi-
tution
of new
section
for
section
33A.

13. For section 33A of the principal Act, the following section shall be substituted, namely:—

Tax on
income
from
tea
estates.

“33A. The income from tea estates shall be subject to tax at fifty per cent of the rates applicable to other income.”

Omission
of
section
33AB.

14. Section 33AB of the principal Act shall be omitted.

Omission
of
section
33B.

15. Section 33B of the principal Act shall be omitted.

Substi-
tution
of new
section
for
section 35.

16. For section 35 of the principal Act, the following section shall be substituted, namely:—

Ex-
penditure
on sci-
entific
research.

“35. Only revenue expenditure incurred on scientific research relating to the manufacturing activity in which the person is engaged shall be allowed as a deduction, provided such programme of scientific research is approved by the prescribed authority.”

17. Section 35C of the principal Act shall be omitted. Omission of section 35C.
18. Section 35CC of the principal Act shall be omitted. Omission of section 35CC.
19. Section 35CCA of the principal Act shall be omitted. Omission of section 35CCA.
20. Section 35CCB of the principal Act shall be omitted. Omission of section 35CCB.
21. For section 35D of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 35D.
- “35D. All expenses incurred prior to the commencement of business and upto the stage of trial run shall be treated as capital expenditure and shall not be allowed as revenue deduction.” Treatment of certain preliminary expenses.
22. Section 35E of the principal Act shall be omitted. Omission of section 35E.
23. In section 36 of the principal Act, the following Explanations shall be inserted at the end, namely:— Amendment of section 36.
- “*Explanation 1.*— The expenditure shall be allowed keeping in view the system of accounting followed by the assessee, i.e., whether it is cash system or mercantile system.
- “*Explanation 2.*— (a) Where cash system is followed, no deduction shall be allowed in respect of expenditure on accrual basis;
- (b) Only genuine expenditure shall be allowed and it shall be the responsibility of the assessee to prove the genuineness;
- (c) In respect of claims for stores, the claim shall be allowed only of the items of stores which have a direct relationship to the product and it is proved to the satisfaction of the assessing authority that the consumption commensurates with the production and the cost audit certificate showing the figures of consumption and production is filed and vouchers for purchase and day to day consumption are produced; in respect of spare parts, which form part of the machinery which is subject to depreciation shall be capitalised whenever replaced;

(d) Other spare parts which may include tools and implements for general use whose life is more than one year shall be capitalised and depreciation shall be allowed at the rate of thirty-three and one-third per cent where the life is more than one year but not more than three years and at the rate of twenty per cent where the life is more than three years but not more than five years and if the life is more than five years, then the depreciation be allowed at the same rate at which it is allowed in the case of the main machinery;

(e) A certificate as to the life of the spare parts, tools, instruments, etc. shall be filled by works engineer, duly verified by the Cost Accountant or Chartered Accountant who shall do so on the basis of the manufacturers literature and other relevant considerations;

(f) Interest shall be allowed only in respect of the capital outlay made in the existing business and not on the outlay of the business which was not in existence during the previous year and interest for the period prior to the stage of trial run or commencement of business shall be capitalised.”.

Amend-
ment of
section
37.

24. In section 37 of the principal Act, for sub-sections 2, 2A, 2B, 3, 4 and 5, the following sub-section shall be substituted, namely:—

“(2) Any expenditure which is genuine and has been incurred for earning the income and is not opposed to the public policy or the public morality shall be allowed as a deduction from the total income.”.

Amend-
ment of
section
40A.

25. In section 40A of the principal Act, for sub-section (3) [and the corresponding Rule 6DD of the Income-tax Rules, 1962], the following sub-section shall be substituted, namely:—

“(3) Where the assessee incurs any expenditure or receives any income for a sum exceeding rupees two thousand and five hundred, otherwise than by a crossed cheque or crossed draft drawn on a bank or by crossed cheque bearing the endorsement “the drawer’s account has been debited” or by a crossed cheque drawn on postal savings account, such expenditure shall not be treated as genuine and shall not be allowed as a deduction and such income shall be treated as genuine income and shall be treated as concealed income in respect of which incorrect particulars have been filed.

Explanation.—(a) All kinds of revenue payments including purchases and all kinds of revenue receipts including sales shall be covered under these provisions;

(b) There shall be no exception to the provisions in relation to any payment or receipt except in the cases where the payees are illiterate or adivasis or tribal people belonging to a place where there are no banking facilities or postal facilities in a radius of ten kilometres of their residence.”.

26. In Chapter IV of the principal Act, under sub-heading "E.—Capital gains", for sections 45 to 55A, the following section shall be substituted, namely:—

Substitution of new section for sections 45 to 55A.

"45. Short-term capital gains shall be charged to tax in the same manner as any other income under the Act."

Tax on short-term capital gains.

27. For section 64 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 64

"64. Income shall be assessed as a family unit as mentioned in the definition of the term 'person' contained in clause (31) of section 2 "

Assessment of income of family unit.

28. For section 65 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 65.

"65. The income of the benamidars, name-lenders or fictitious persons shall be included in the income of the real owner and assessed in the hands of the person to whom it really belongs."

Income of bena-midars, etc. to be included in the income of the assessee.

29. In Chapter VI of the principal Act, under sub-heading "Set off, or carry forward and set off", for sections 70 to 80, the following sections shall be substituted with effect from the assessment year 1986-87, namely:—

Substitution of new section for sections 70 to 80.

"70. Income or loss under each head of income shall be worked out separately in accordance with the existing provisions of the Act; loss under one head shall be adjusted against income in the other to arrive at the final figure of total income or loss in the previous year and in case there is total loss worked out after the aforesaid adjustments, no tax shall be levied on the assessee but the loss shall not be carried forward and set off against the income of the subsequent years.

Set off of or carry forward and set off of losses.

Cessation
of un-
absorbed
deprecia-
tion,
losses,
etc.

71. All the provisions relating to the carry forward of unabsorbed depreciation, development rebate or any other relief or allowance which could not be given adjustment or set off against the income of the same previous year wherever contained in the Act shall cease to exist with effect from the date the Income-tax (Amendment) Act, 1985 comes into force and all the unabsorbed depreciation, losses or other reliefs or allowances carried forward for set off under any of the existing provisions of law shall be ignored."

Omission
of
section
80 H.H.

30. Section 80HH of the principal Act shall be omitted.

Omission
of section
80 HHA.

31. Section 80HHA of the principal Act shall be omitted.

Omission
of
section
80HHB.

32. Section 80HHB of the principal Act shall be omitted.

Substi-
tution
of new
section
for
section
80HHC.

33. For section 80HHC of the principal Act, the following section shall be substituted, namely:—

Tax on
income
from
export
business.

"80HHC. In case of taxable income derived from export business, the taxes leviable shall be three-fourth of the rates applicable to income from other sources."

Omission
of
section
80I.

34. Section 80I of the principal Act shall be omitted.

Omission
of
section
80J.

35. Section 80J of the principal Act shall be omitted.

Omission
of
section
80K.

36. Section 80K of the principal Act shall be omitted.

Omission
of
section
80VVA.

37. Section 80VVA of the principal Act shall be omitted from the assessment year 1986-87.

Omission
of
Chapter
XI.

38. Chapter XI of the principal Act shall be omitted from the assessment year 1986-87.

Omission
of
section
115.

39. Section 115 of the principal Act shall be omitted.

40. In section 117 of the principal Act,—

Amend-
ment of
section
117.

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Commissioner of Income-tax may, subject to the rules and orders of Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Inspectors as may be sanctioned by the Central Government.”;

(b) the following Explanation shall be added at the end, namely:—

“Explanation.—There shall be only one class of Income-tax Officer i.e. Income-tax Officers Class I; all those who are appointed as Income-tax Officers Class II or Income-tax Officers Group B shall be deemed to have been appointed as Income-tax Officers Class I or Group A from the date the Income-tax (Amendment) Act, 1985 comes into force and their seniority vis-a-vis, direct recruits to Group A (Class I) shall be modified for the purposes of promotions and all other purposes by allowing them weightage equal to half the length of Group B service rendered in the past.”.

41. In section 131 of the principal Act, the following explanation shall be inserted at the end, namely:—

Amend-
ment of
section
131.

“Explanation.—Where it has not been possible to obtain the approval of the Commissioner within fifteen days of retention or impounding of books, documents, etc., for extension of such retention by the Income-tax officer or Assistant Director of Inspection and where the Commissioner considers that the release of books shall be prejudicial to the interest of revenue, he may allow retention of such books, documents etc. even after expiry of the said fifteen days after recording reasons therefor.”

42. In section 132 of the principal Act,—

Amend-
ment of
section
132.

(i) after sub-section (5), the following proviso shall be inserted at the end, namely:—

“Provided further that any cash recovered during the course of search which is not entered in the cash book or where the cash book is not maintained upto-date and where no immediate proof has been offered to the authorised officer on the spot as to the source of such cash, the same shall not only be seized but shall also be confiscated straightaway and shall not be subject to the provisions of this sub-section except for the purpose of determination of the additional tax and interest imposed under this sub-section in connection with the retention of other seized assets and such cash shall also be taken into account for levy of addition tax and interest under other provisions of the Act.”;

(ii) after sub-section (8), the following proviso shall be inserted at the end, namely:—

“Provided further that where it has not been possible to obtain approval for retention of books beyond one hundred and eighty days for valid reasons or due to bonafide omission, and if the Commissioner or Director of Inspection is satisfied that the release of books after the expiry of the said period shall be prejudicial to the interest of revenue, he may allow the retention of books beyond the said period, after recording the reasons therefor.”.

Amend-
ment of
section
133A.

43. In section 133A of the principal Act, in the *Explanation* at the end, in clause (a) after the words “by the Income-tax Officer”, the following shall be inserted, namely:—

“or the Assistant Director or the Inspecting Assistant Commissioner or the Deputy Director of Inspection”.

Amend-
ment of
section
139.

44. In section 139 of the principal Act, in sub-section (1), after the existing proviso, the following proviso shall be inserted with effect from the assessment year 1986-87, namely:—

“Provided further that all the returns by all persons shall be filed by 30th day of June of the assessment year except in exceptional circumstances, where extension may be allowed by the assessing authority beyond the said date after he is satisfied that in the books of account and relevant vouchers no manipulation is possible and provisional Trading Accounts, Profit and Loss Accounts and Balance Sheets are filed before him.”.

Amend-
ment of
section
145.

45. In section 145 of the principal Act, the following Explanations shall be inserted at the end, namely:—

“*Explanation 1.*— The method of accounting employed by the assessee shall be treated as one from which the income cannot be properly deduced,—

(i) if the day to day stock account of consumption and production is not maintained;

(ii) if the detailed inventories of stock have not been filed and the method of valuation of stocks has not been followed consistently and any change therein has been made;

(iii) if the items of stocks appearing in the opening stock and purchase cannot be correlated and identified with the sales or closing stock or *vice-versa*;

(iv) if the stock account of raw material is maintained in terms of weight and the stock account of production is maintained in terms of quantity or *vice versa* and no correlation between the two is possible;

(v) if the provisions of sub-section (3) of section 40A are applicable;

(vi) if purchases and sales are not fully vouched and complete names and addresses of the purchasers and sellers are not entered on the vouchers except wherein the trade is of retail nature and comprises of numerous items making it virtually impossible to write names and addresses on the vouchers and amounts involved are of less than rupees two thousand and five hundred each;

Explanation 2.—The accounts shall be treated as incorrect and incomplete,—

(a) if the purchases or sales are omitted from the books or if the quantitative reconciliation of the opening stock purchases, sales and closing stock reveals any difference or if the consumption does not quantitatively tally with the production; or

(b) if the shortage or scrap has been shown at a percentage higher than what is acceptable in that kind of trade or where the sale of scrap or by-products are not genuine and cannot be verified; or

(c) where fictitious and bogus cash credits have been entered in the cash book or where credits or deposits have been made in the bank accounts in bogus or benami names; or

(d) if during the course of survey or search operations, it is found that the cash book or stock register was not written up-to-date and the cash balance or stock as per book account did not tally with the actual cash balance or stock in hand on physical verification, or where the vouchers or supporting evidence is not produced to verify the correctness of the transactions during the course of the survey and search operations under section 133A or section 132; or

(e) if the transactions during the course of search or survey operations have been found entered other than in the regular books; or

(f) if any other circumstances are found to exist, which in the opinion of the assessing authority, would render the books of account to be incorrect or incomplete.

Overriding Explanation.—(a) Where reasonable grounds exist either for invoking the provision of sub-section (1) or provision of sub-section (2), the judgement of the Assessing Officer shall not be justiciable on the basis of inadequacy or insufficiency of the grounds for invoking the said provision before any Appellate authority or Court;

(b) The best judgement assessment of the Assessing authority in the matter of estimate of income shall also not be justiciable before any Appellate authority or Court and no Appellate authority or Court shall substitute their subjective guess for that of the Assessing authority provided the estimate of the Assessing authority is supported by reasonable grounds and he has taken approval of the estimate by his immediate superior authority before finalising the assessment who shall give an opportunity of being heard to the assessee.”.

Amend-
ment of
section
147.

46. In section 147 of the principal Act, the following Explanations shall be inserted at the end, namely:—

“Explanation 3.—The reopening of the assessment and issue of notice under section 148 shall not be challenged before any court of law where as a result of investigation, it has been found that the facts were not disclosed truthfully and that due to commission of fraud or mis-representation by the assessee, the income had escaped assessment or was under assessed and mere disclosure of full facts would not be treated as sufficient escape from the provisions of clause (a), if the disclosure was not truthful.

Explanation 4.—The lack of investigation or proper probe on the part of the Income-tax Officer in a case where there was commission of fraud or mis-representation shall not be a bar to the reopening of the assessment under clause (a) even if the facts were disclosed fully and the Income-tax Officer had applied his mind to the facts which were not found to be truthful subsequently.”

Substi-
tution
of new
sections
for
sections
182 to 189.

47. For sections 182 to 189 of the principal Act, the following sections shall be substituted, namely:—

Assess-
ment
of
income
of a
firm.

“182. There shall be no distinction between a registered or an un-registered firm; the income from the firm if it is not part of the family unit or an association of persons it shall be taxed in the usual manner and at the same rates as shall apply to a family unit or to an association of persons or a private limited company.

Assess-
ment of
income
of an
individual.

183. Income derived by an individual from the family unit or from the association of persons or a firm or a private limited company or a public limited company shall be assessed as follows:—

(A) *Income from family unit*—Income from the family unit shall be divided after meeting the tax liability among the co-parceners in the same ratio in which they hold their interests in the co-parcenary on the last day of the previous year.

(B) *Share from Association of persons*—After deducting the tax liability of the association of persons, the surplus shall be divided among the members of the association in equal ratio or in accordance with the written agreement, which shall be filed along with the return of income; it is necessary that this agreement is executed on or before the commencement of the previous year on a non-judicial stamp paper of rupees ten.

(C) *Income from firm*—The surplus income of the firm after meeting the tax liability of the firm shall be divided equally among the partners or in accordance with the partnership deed, a copy whereof shall be filed along with the return of income; it is necessary that this agreement is executed before the commencement of the previous year on a judicial stamp paper of rupees ten.

(D) *Dividend from private limited company*—Surplus income after meeting the tax liability of the private limited company shall be divided among the share-holders as dividends in accordance with their share holding.

(E) *Dividends from Public limited Company*—Income from dividend from a public limited company shall be included in the total income of the individual at its gross value, i.e. net dividend plus tax deducted at source and the benefit of tax deducted at source shall be allowed as usual.

Explanation.—(a) Income from a family unit or a firm or an association of persons or a private limited company which has already been subjected to tax, shall be assessed in the hands of the individual as it may arise or accrue to him and income-tax on such income shall be charged at half of the rates in force;

(b) There shall be a common schedule for rates of income-tax to be charged from a family unit, association of person, firm, private limited company or public limited company."

48. For sections 207 to 212 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution
of new
section
for
sections
207 to 212.

"207. The advance tax shall be payable in four equal instalments as follows:—

Payment
of
advance
tax.

30th June, 30th September, 31st December and 31st March in respect of all cases where the estimated taxable income exceeds rupees fifty thousand and in respect of all such income where no tax is deducted at source.

Explanation.—(a) It shall be the responsibility of the assessee to file the estimate of advance tax and to pay the same and it shall not be necessary to issue any notice on behalf of the department for this purpose;

(b) It shall be open to the assessee to make any adjustment in the payment of instalments so that the ultimate payment of advance tax should not fall short of the tax determined during the course of assessment by more than twenty percent;

(c) If there is difference in the payment of advance tax and assessed tax by more than twenty per cent., interest at the rate of twenty-four per cent. shall be charged on the amount of such short payment which exceeds twenty per cent. for a period during which the assessee kept back the money due to the Government by way of advance tax, both in the case of new as well as existing assessee;

(d) The interest shall be treated as additional tax and it shall not be necessary to examine the element of mens-rea while levying it;

(e) If there was any excess payment over and above what was payable as per the tax liability which may be determined on assessment, the assessee shall be entitled to receive the interest on the amount paid in excess for the period for which the excess payment remained with the Government."

Amend-
ment of
269C.

49. In section 269C of the principal Act,—

(i) in sub-section (1) and wherever it occurs in Chapter XXA, for the words "fifteen percent.", the words "fifty percent" shall be substituted;

(ii) after sub-section (2), the following Explanation shall be inserted at the end, namely:—

"Explanation.—(a) If the assessee challenges the existence of the belief on the part of the competent authority under sub-section (1), the Government shall be entitled to put the property to public auction and in case, there are no bidders or the bidding is not upto the mark in the opinion of the competent authority it shall be open to the Government to acquire the property at the price which shall be fifty percent higher than the price at which the property is proposed to be transferred;

(b) The provisions of Chapter XXA dealing with acquisition of immovable property shall as much apply to the properties newly acquired after coming into force of the Income-tax (Amendment) Act, 1985 and it shall be open to the competent authority to initiate the proceedings for the compulsory acquisition of the such newly acquired properties if he is satisfied that the investment in the properties exceeds by fifty percent. of what has been disclosed and also shall be entitled to put such property to public auction in the same manner as provided in the case of transferred property and in case of lack of bidders or the bidding not being upto the mark in his opinion, it shall be open to such competent authority to acquire the property by paying fifty percent over and above the amount disclosed on the acquisition of such properties;

(c) Provisions of Chapter XXA shall be invoked only in those cases where suspected concealment is rupees five lakhs or more."

Amend-
ment of
section
271.

50. In section 271 of the principal Act, after sub-section (4), the following Explanation shall be inserted at the end, namely:—

"Explanation.—(a) In this section, for the word, 'penalty', wherever it occurs, the words, "additional tax" shall be substituted and no appellate authority or court shall examine the element of mens-rea for its imposition;

(b) Maximum additional tax leviable shall be equal to the amount assessed over and above the returned income except in respect of the additions which may be made due to honest difference of opinion in interpretation of provisions of law, for evasion of tax or concealment of income or for furnishing inaccurate particulars;

(c) For non-compliance with notices under section 139, the maximum additional tax leviable shall be levied equal to the assessed tax where the return is not filed and where the return is filed belatedly, the additional tax shall be levied at the rate of five per cent per month in all cases, without any maximum or minimum;

(d) For non-compliance with notices under sub-section (1) of section 142 and sub-section (2) of section 143, maximum additional tax leviable shall be equal to the amount of tax sought to be evaded by such non-compliance;

(e) Onus for proving the correctness of income both in respect of the receipts as well as payments shall be squarely on the assessee to the extent the facts are in his knowledge and control;

(f) All the penalties under clauses (a), (b), and (c) of sub-section (1) shall be imposed along with the regular assessment of the total income of the assessee;

(g) The assessee shall not be entitled to adduce any further evidence, in appeal or in any subsequent proceeding, either in support of the claim that the additional tax was not to be imposed or that the assessment of the total income was not correct, in addition to what was placed before the assessing authority at the time of the assessment and no Appellate authority or court shall entertain any additional evidence in any circumstances."

51. After section 279A of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
279AA.

43 of 1961.

"279AA. All criminal prosecutions filed under any provision contained in Chapter XXII of the Income-tax Act, 1961 or any other provision of Income-tax (Amendment) Act, 1985 or analogous provisions of the Indian Penal Code with regard to the offences relating to the Income-tax (Amendment) Act, 1985 shall be disposed of within one year of filing the criminal complaint."

Limita-
tion for
disposal
of
criminal
prose-
cution.

STATEMENT OF OBJECTS AND REASONS

This Bill is aimed to achieve the following objects:—

- (1) to eradicate the black money;
- (2) to simplify the Direct Taxation Laws;
- (3) to remove the discretionary power which leads to corruption;
- (4) to remove the incentives which have been mis-utilised for evasion of taxes;
- (5) to put curb on unbridled powers of the appellate authorities who are playing havoc with the direct tax revenues;
- (6) to remove lacunae in certain areas and plug the loopholes which are utilised by the tax evaders;
- (7) to revive and revitalise some of the most powerful provisions of the Income-tax Act which have been rendered redundant either due to the onslaught of the Income-tax Appellate Tribunal or on account of their disuse; and
- (8) to streamline the tax-administration and to remove its inequities.

Hence this Bill.

New Delhi;
August 19, 1985.

MOOL CHAND DAGA

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 133/349/85-TPL, dated 18 November, 1985 from Shri Vishwanath Pratap Singh, Minister of Finance to the Secretary-General, Lok Sabha].

The President, having been informed of the subject matter of the Income-tax (Amendment) Bill, 1985 by Shri Mool Chand Daga, M.P., has recommended under articles 117(1) and 274(1) of the Constitution the introduction of the said Bill and under article 117(3) of the Constitution the consideration of the said Bill in Lok Sabha.

FINANCIAL MEMORANDUM

Clause 40 of the Bill seeking to amend section 117 of the Income-tax Act provides for appointment of all Income-tax Officers of Class II service to Class I service with immediate effect. This would involve expenditure from the Consolidated Fund of India on account of increased salaries and allowances. This would involve an annual recurring expenditure of about rupees ten lakhs.

A non-recurring expenditure of about rupees ten lakhs is also likely to be involved from the Consolidated Fund of India.

SUBHASH C. KASHYAP,
Secretary-General.